

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re:

Zohar III, Corp., *et al.*,¹

Debtors.

LYNN TILTON; PATRIARCH PARTNERS
VIII, LLC; PATRIARCH PARTNERS XIV,
LLC; PATRIARCH PARTNERS XV, LLC;
OCTALUNA, LLC; OCTALUNA II, LLC; and
OCTALUNA III, LLC,

Appellants,

v.

MBIA INC., MBIA INSURANCE
CORPORATION, U.S. BANK, N.A.,
ALVAREZ & MARSAL ZOHAR
MANAGEMENT, CREDIT VALUE
PARTNERS, LP, BARDIN HILL
INVESTMENT PARTNERS F/K/A
HALCYON CAPITAL MANAGEMENT LP,
COÖPERATIEVE RABOBANK U.A.,
VÄRDE PARTNERS, INC., ASCENSION
ALPHA FUND LLC, ASCENSION HEALTH
MASTER PENSION TRUST, CAZ
HALCYON OFFSHORE STRATEGIC
OPPORTUNITIES FUND, L.P., CAZ
HALCYON STRATEGIC OPPORTUNITIES
FUND, L.P., BROWN UNIVERSITY, HCN
LP, HALCYON EVERSOURCE CREDIT
LLC, HLF LP, HLDR FUND I NUS LP,
HLDR FUND I TE LP, HLDR FUND I UST
LP, HALCYON VALLÉE BLANCHE

Chapter 11

Case No. 18-10512 (KBO)

Jointly Administered

Case No. 1:22-cv-00400 (TLA)

¹ The Debtors, and, where applicable, the last four digits of each of their respective taxpayer identification numbers, are as follows: Zohar III, Corp. (9612), Zohar II 2005-1, Corp. (4059), Zohar CDO 2003-1, Corp. (3724), Zohar III, Limited (9261), Zohar II 2005-1, Limited (8297), and Zohar CDO 2003-1, Limited (5119). The Debtors' address is c/o FTI Consulting, Inc., 1166 Avenue of the Americas, 15th Floor, New York, NY 10036.

MASTER FUND LP, BARDIN HILL EVENT-DRIVEN MASTER FUND LP, PRAETOR FUND I, A SUB FUND OF PRAETORIUM FUND I ICAV; HIRTLE CALLAGHAN TOTAL RETURN OFFSHORE FUND LIMITED; HIRTLE CALLAGHAN TOTAL RETURN OFFSHORE FUND II LIMITED; HIRTLE CALLAGHAN TRADING PARTNERS, L.P.; AND THIRD SERIES OF HDML FUND I LLC.,

Appellees.

**APPELLANTS' MOTION FOR AN ORDER
ACCEPTING UNDER SEAL DOCUMENTS DESIGNATED FOR
INCLUSION IN RECORD OF APPEAL²**

Patriarch Partners VIII, LLC, Patriarch Partners XIV, LLC, Patriarch Partners XV, LLC, Octaluna, LLC, Octaluna II, LLC, Octaluna III, LLC, and Lynn Tilton (collectively, the “Appellants”), appellants in the instant appeal (the “Appeal”), hereby submit this motion (the “Motion”) for entry of an order pursuant to Rules 8009(f) and 8013 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), accepting under seal certain documents that were filed in redacted form and placed under seal in Bankruptcy Adversary Proceeding No. 19-50390 (KBO) (the “Bankruptcy Case”), pending in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), which documents the Appellants have designated for inclusion in the record on this Appeal. *See Exhibit A*, attached hereto (“Proposed Order”). In support, the Appellants respectfully state as follows:

1. On March 29, 2022, the Appellants filed a notice of appeal pursuant to 28 U.S.C. § 158(a)(1), Bankruptcy Rules 8002 and 8003, and Rule 8003-1 of the Local Rules of

² Capitalized terms not defined herein have the meanings ascribed to them in the Amended Complaint [Adv. D.I. 160] (“Am. Compl.”).

Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware [Adv. D.I. 237], appealing the *Memorandum Opinion and Order on Defendants Motions to Dismiss the Amended Complaint of Lynn Tilton and The Patriarch & Octaluna Entities for Equitable Subordination* [Adv. D.I. 236] (the “Order”)

2. Concurrently herewith, the Appellants filed the *Appellants’ Designation of Record and Statement of Issues on Appeal Pursuant to Rule 8009(a) of the Federal Rules of Bankruptcy Procedure* (the “Designation”).

3. The Designation includes certain documents that were sealed or redacted by order of the Bankruptcy Court upon motions made by the appellees in this Appeal (the “Appellees”) or the Appellants (collectively, the “Sealed Documents”).

4. Bankruptcy Rule 8009(f) provides that the Sealed Documents may be transmitted to this Court only upon this Court’s order. Fed. R. Bankr. P. 8009(f). Bankruptcy Rule 8009(f) states:

A document placed under seal by the bankruptcy court may be designated as part of the record on appeal. In doing so, a party must identify it without revealing confidential or secret information, but the bankruptcy clerk must not transmit it to the clerk of the court where the appeal is pending as part of the record. Instead, a party must file a motion with the court where the appeal is pending to accept the document under seal. If the motion is granted, the movant must notify the bankruptcy court of the ruling, and the bankruptcy clerk must promptly transmit the sealed document to the clerk of the court where the appeal is pending.

Id. The rule, “which is new and has no counterpart in the Appellate Rules, deals with the manner in which ... secret or confidential information is to be protected in the event the document or documents containing such information are included in the record on appeal.” COLLIER ON BANKRUPTCY ¶ 8009.11 (Alan N. Resnick & Henry J. Sommer eds. 16th ed. 2016).

5. The Sealed Documents are:
- a. *Reply in Support of Defendant Alvarez & Marsal Zohar Managements Motion to Dismiss Complaint of Lynn Tilton and the Patriarch & Octaluna Entities* [Adv. D.I. 111]
 - b. *Letter from Theresa Trzaskoma to the Honorable Karen B. Owens regarding October 27, 2021 hearing* [Adv. D.I. 132]
 - c. *Amended Complaint to Modify Nature of Suit* [Adv. D.I. 160]
 - d. *Memorandum of Law of Zohar III Controlling Class in Support of their Motion to Dismiss the Amended Complaint under Federal Rule of Civil Procedure 12(b)(6) Made Applicable by Bankruptcy Rule 7012* [Adv. D.I. 168]
 - e. *Motion to Dismiss Adversary Proceeding* [Adv. D.I. 169]
 - f. *Declaration in Support of Michael E. Petrella Regarding Defendants MBIA Inc.'s and MBIA Insurance Corporation's Motion to Dismiss Equitable Subordination Complaint* [Adv. D.I. 170]
 - g. *Plaintiffs' Omnibus Opposition to Defendants' Motions to Dismiss the Amended Complaint* [Adv. D.I. 192]
 - h. *Reply Memorandum of Law of the Zohar III Controlling Class in Further Support of their Motion to Dismiss the Amended Complaint* [Adv. D.I. 205]
 - i. *Reply/Defendants MBIA Inc.'s and MBIA Insurance Corporation's Reply Memorandum of Law in Further Support of Their Motion to Dismiss Equitable Subordination Amended Complaint* [Adv. D.I. 206]
 - j. *Amended Complaint to Modify Nature of Suit* [Adv. D.I. 233]

6. As the relief the Appellants seek is procedural, this Court may rule on it at any time without awaiting a response. Fed. R. Bankr. P. 8013(b).

WHEREFORE, the Appellants respectfully request that this Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, accepting the Sealed Documents into the appellate record and granting any other relief that the Court deems just and proper under the circumstances.

RULE 7.1.1 STATEMENT

Pursuant to Rule 7.1.1 of the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware, the undersigned hereby certifies that on April 12, 2022, counsel for the Appellants and Appellees met and conferred via email with respect to this Motion. Appellees have indicated they do not object to entry of the Proposed Order on the Motion.

Dated: April 12, 2022
Wilmington, Delaware

COLE SCHOTZ P.C.

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